IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19295 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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RATANBHAI @ RATNO NARSINH BHABHOR - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Petitioner(s) : 1,MR MR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
Mrs. Hansa B. Punani, ld. AGP for Respondent: 3,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 26/10/2005

ORAL JUDGMENT

1. The detenue, who is detained under the provisions of Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') branded as 'Bootlegger' within the meaning of section 2(c) of the PASA Act, vide order dated 26.08.2005 passed by the Police Commissioner, Vadodara City, has filed this petition under

Article 226 of the Constitution of India to declare the order of detention as illegal, arbitrary and invalid on the ground that it suffers from non-application of mind and violative of provisions of Article 14, 19, 21 and 22 of the Constitution of India.

2. The order of detention refers to two instances, under the provisions of sections 454, 457, 380 and 114 of Indian Penal Code, which have been registered with Gorva Police Station on two different occasions against the detenue. According to the detaining authority, the above stated materials are sufficient enough to arrive at the subjective satisfaction for detaining the detenue under the provisions of PASA Act. That the activities of the detenue is prejudicial and the same is likely to result into the disturbance of public order, and therefore, considering the relevant documents and materials the detenue was detained in exercise of powers under Sub-section (1) of Section 3 of the PASA Act. Apart from the crime registered cases, as mentioned in the

detention order does not reflect whether any relevant or specific material is considered by the detaining authority.

3. The learned advocate for the petitioner Mr. H.R.Prajapati confined his arguments on the ground that the alleged offences registered against the detenue cannot be said the cause of disturbing the public order in any circumstances prejudicial and have potential to disturb the even tempo of public life and/or public health. According to him, no relevant materials did exist before the detaining authority while passing the order of detention and the subjective satisfaction arrived at by the detaining authority therefore vitiated and order of detention dated 26.08.2005 suffers from vice of non-application of mind, and therefore, required to be quashed and set aside.

4. In support of his arguments he has placed reliance on the decision of the learned Single Judge of this Court dated 23.03.2004 rendered in Special Civil Application No.14792 of 2003 in the

case of Zarinbibi w/o. Nazirmohamad Noormohamad Shaikh Vs. Commissioner of Police Baroda City and submitted that in the above mentioned case also five offences punishable under the Bombay Prohibition Act 1949 were registered against the detenue of that case and similar recitals about disturbance of public order by prejudicial activities of the petitioner was found in the order of detention. According to him after considering various decisions reported in 1995 (2) GLR 1268 and 2000(1) GLH 393 DB the Court has considered relevant aspects. Therefore, according to the learned advocate for the petitioner, the ratio laid down in the above mentioned judgment is squarely applicable in the facts of the present case. He has submitted that except the offences mentioned in the order of detention no other criminal activities attributed to the petitioner and no case of violence disturbing the public peace or public order is alleged against the detenue.

5. The learned Assistant Government Pleader Mrs. H.B.Punani has submitted that the material relied

on by the detaining authority is sufficient enough to invoke the provisions and to exercise the power under the provisions of Sub-section 2 of Section 3 of the PASA Act and subjective satisfaction of the detaining authority arrived at on the basis of conscious decision cannot be said that the said satisfaction is dehors the material on record. Relying upon various decisions, she has submitted that the order of detention is valid and legal and no interference is required to be called for under Article 226 of the Constitution of India.

6. Having heard, the learned counsel for the parties and perused the record of the case including the affidavit in reply, I am of the opinion that registration of two cases against the detenue under the provisions of Indian Penal Code are the only instances and the material relied on by the detaining authority simply registration of offences under the IPC, cannot be said to be disturbed the even tempo of public life or public order. There is no case or any other prejudicial activities of the detenue resulting into large scale violence which

may disturb the public health and public order. .there was credible and cogent material before the detaining authority which was conscious that as a result of resorting to violence by the petitioner of that case for carrying on his bootlegging activities, even tempo of public order disturbed on some occasions. In such circumstances the apex court refused to interfere with the exercise of power by the detaining authority.

7. In the present case, it is evident from the record that even name of un-named witness is not recorded by the detaining authority which can even a remotely connect the prejudicial activities of the detenue resulting into disturbance of the public order. That only material which remains, is the registered criminal cases and that by itself cannot be said to be a material for the purpose of holding that the detenue's activity had become a threat to the public order. Necessary material in this regard is totally warranting in the body of the detention order.

8. In view of the above, in the present case also no other credible material or cogent material did exist before the detaining authority for arriving at the subjective satisfaction that the activities of the detenue is prejudicial to the public order and, therefore, the order of detention is passed contrary to the provisions of the settled law and therefore, required to be quashed and set aside.

9. In the circumstances, the order of detention dated 26.08.2005 passed by the respondent no.2 herein, is hereby quashed and set aside

10. The detenue Ratanbhai @ Ratno Narsinh Bhabhor, is therefore ordered to be set at liberty forthwith, if not require in any other offence by any other authority. Rule is made absolute to the aforesaid extent with no order as to costs. Direct Service is permitted.

(ANANT S. DAVE, J.)

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